

STATE OF INDIANA            )  
  ) ss:  
COUNTY OF ST. JOSEPH    )

ST. JOSEPH CIRCUIT COURT  
ST. JOSEPH SUPERIOR COURT  
ST. JOSEPH PROBATE COURT

IN RE: NOTICE AND COMMENT )  
ON JOINT LOCAL RULES            )

71C01-1006-CB-00006

**NOTICE AND COMMENT PERIOD FOR PROPOSED AMENDMENTS**  
**TO THE JOINT LOCAL RULES OF COURT**

Whereas, in compliance with the mandate of the Indiana Supreme Court as contained within Trial Rule 81(A), the Courts of record within the 60<sup>th</sup> Judicial Circuit promulgated a single set of local rules for use in St. Joseph County, which were effective on January 1, 2007,

Whereas, Trial Rule 81(J) requires that these Courts periodically review their local rules to insure compliance with the Indiana Rules of Trial Procedure (as revised) or other Rules of the Indiana Supreme Court; and

Whereas, Trial Rule 81(B) requires a notice and comment period prior to the amendment of these local rules; and

Whereas, the courts of record in St. Joseph County have caused the proposed amendments to these local rules to be posted within the Court Houses of the 60<sup>th</sup> Judicial Circuit, and on the websites maintained by the St. Joseph County Bar Association and the Indiana Division of State Court Administration;

WHEREFORE, the undersigned judges of the courts of record of the 60<sup>th</sup> Judicial Circuit hereby notice and encourage all interested persons to review and provide comment regarding these proposed rules to Court Administrator of the St. Joseph Circuit Court, Attn: Lisa Plencner, 101 S. Main Street, 3<sup>rd</sup> Floor, South Bend, Indiana 46601, no later than **July 1, 2010**.

These amended rules will be effective on **January 1, 2011**.

\_\_\_\_\_/S/\_\_\_\_\_  
Hon. Michael G. Gotsch  
Judge, St. Joseph Circuit Court

\_\_\_\_\_/S/\_\_\_\_\_  
Hon. Michael P. Scopelitis  
Chief Judge, St. Joseph Superior Court

\_\_\_\_\_/S/\_\_\_\_\_  
Hon. Peter J. Nemeth  
Judge, St. Joseph Probate Court

PROPOSED LOCAL RULE REVISIONS FOR 60<sup>TH</sup> JUDICIAL CIRCUIT: ST. JOSEPH  
CIRCUIT, ST. JOSEPH SUPERIOR AND ST. JOSEPH PROBATE COURTS:

LR71-CR2.2 Rule 303.3. Other Criminal Proceedings.

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(8) Notwithstanding subparagraphs four (4) ~~and five (5)~~ above:

(a) If if a case is randomly assigned to a Judge of this court at the time when there is already pending before another Judge of the court another criminal felony against the same defendant, the later filed felony case(s) may be transferred to the Judge of the earliest assigned and pending case.

(b) Cases involving co-defendants ~~or~~ assigned randomly to different Judges of this court may be transferred to the Judge to whom the earliest filed case was assigned; however, where a co-defendant in a newly filed case already has a pending felony in this court, assignment of the new case should be made pursuant to subparagraph (a) above.

(c) Multiple ~~multiple~~ cases pending against a defendant may be reassigned by the Chief Judge, pursuant to Rule LR71-AR00-7(B) herein so that one Judge is assigned all such cases.

(d) Cases randomly filed in which one or more of the counts charge the crime of Murder shall not be subject to transfer under this rule.

(9) Where a petition to revoke probation is filed alleging the commission of a new felony crime and the new felony crime is pending in this court, the ~~petition~~ new charge may be transferred to the Judge ~~to~~ with whom the ~~new felony is assigned~~ probation revocation is pending.

**LR71-FL00 Rule 405. Expectations and Requirements for Parents and Attorneys.**

**405.1. Expectations of Parents and Attorneys.**

- a. Parents and attorneys in family cases will conduct themselves in concert with the courts to serve as co-problem solvers.
- b. Parents and attorneys pursue the best interests of all family members with particular deference to the needs and welfare of the children.
- c. Parents and attorneys will pursue all opportunities to resolve disputes and conflicts before relying on the Court for a determination.
- d. Parents and attorneys will treat one another with courtesy and respect.

**405.2. Requirements for Initial, Provisional and Other Hearings.**

405.2.1. Pre-Hearing Meeting Requirements, Exceptions.

It is required that, unless considerations of safety or other good cause make it unreasonable, before the date and time set for an initial, provisional or other hearing, attorneys and pro se parties shall meet with each other in a good-faith attempt to resolve all issues. Attorneys and pro se parties contacted for this purpose shall make themselves reasonably available for consultation.

Prior to commencement of a hearing or trial the attorneys and pro se parties shall certify to the court that they have complied with this rule. The duty of consultation shall be continuing.

405.2.2. Resolution of Parenting Time Problems and Disputes

405.2.2.1. Disagreements Generally. When a disagreement occurs regarding, parenting time and the requirements of the Indiana Parenting Time Guidelines, both parents shall make every effort to discuss options, including mediation, in an attempt to resolve the dispute before going to court.

405.2.2.2. Mediation. If court action is initiated, the parents shall enter into mediation pursuant to Rule 411.1 unless otherwise ordered by the court.

405.2.2.3. Child Hesitation. If a child is reluctant to participate in parenting time, each parent shall be responsible to ensure the child complies with the scheduled parenting time. In no event shall a child be allowed to make the decision on whether scheduled parenting time takes place.

405.2.2.4. Relocation. When either parent considers a change of residence, reasonable advance notice of the intent to move in accord with Indiana Code provisions shall be given to the other parent. Parents are expected discuss necessary changes in the parenting schedule as well as the allocation of transportation costs in exercising parenting time which may result from the move.

405.2.2.5. Withholding Support or Parenting Time. Neither parenting time nor child support shall be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for noncompliance. A child has the right both to support and parenting time, neither of which is dependent upon the other. If there is a violation of either requirement, the remedy is to apply to the court for appropriate sanctions.

405.2.2.6. Enforcement of Parenting Time.

a) Contempt Sanctions. Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provisions contained in the order may subject the offender to contempt sanctions. These sanctions may include fine, imprisonment and/or community service.

b) Injunctive Relief. Under Indiana law, a non-custodial parent who regularly pays support and is barred from parenting time by the custodial parent may file an application for an injunction to enforce parenting time under Indiana law.

c) Criminal Penalties. Interference with custody or visitation rights may be a crime under Indiana law

405.2.2.7. Attorney Fees. In any court action to enforce an order granting or denying parenting time, a court may award reasonable attorney fees and expenses of litigation. A court may consider whether the parent seeking attorney fees substantially prevailed and whether the parent violating the order did so knowingly or intentionally. A court can also award attorney fees and expenses against a parent who pursues a frivolous or vexatious court action.

#### 405.2.3. Inapplicability to the Title IV-D Agency.

As the State of Indiana does not represent either of the parents in a Title IV-D child support case, this rule does not apply to petitions or rules to show cause filed by the Title IV-D agency; however, the attorney for the Title IV-D agency and the parent(s) and their counsel, if any, are encouraged to meet and ~~discuss~~ facilitate resolution of these matters in advance of any hearing.

LR71-FL00 Rule 409. Hearings.

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409.2. Parenting Issues. Parents and attorneys are reminded of their obligation to avoid the use of exaggeration and unnecessarily harass criticism in their motions and pleadings. Hearings on motions and pleadings may be filed with the Court in matters involving parenting time and parenting concerns may only be scheduled for hearing after first having attempted to resolve the issue(s) by reaching agreements that best serve the interest of all family members with particular regard to the best interest of the children. Except in instances where it would be dangerous (i.e. past or present domestic violence; abuse or neglect of children) or otherwise unreasonable to do so, if both parents are represented by counsel, attorneys are expected to use personal or telephonic consultation to resolve any issue before seeking relief from the Court. In that consultation, it is expected that counsel will cooperate to:

- (1) Attempt to resolve the matter(s) at issue;
- (2) Discuss the alternative resources (including but not limited to counseling, mediation, support from the DRCB, etc.) that could be used to resolve the conflict and foster cooperation further serving the best interests of the children;
- (3) Confirm that the parents have completed their mandatory website work and attended the co-parenting classes, and review with them their Agreed Commitments from the website discussed below in Rule LR71-FL00-413;

(4) Attempt to resolve ongoing conflict by assisting their clients in the development of, with their clients, a Parenting Plan (forms are available from the DRCB) to serve all family members with particular regard for the best interest of the children.

LR71-FL00 Rule 410. Trials and Pre-trial Conferences.

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410.3 Pretrial Order and Required Pretrial Meeting.

In each case expected to proceed to trial on any contested matter, at least twenty-one days prior to the trial date the parties and their respective counsel (if any) shall meet in person. The purpose of this meeting shall be a) to explore whether settlement is possible, and if so, to attempt to reach a settlement; and b) if settlement is not possible or efforts to reach a settlement are fruitless, to prepare a joint pretrial order containing:

1. All stipulations.
2. Each party's contentions of facts that are in dispute and require resolution by the court.
3. Where applicable, each party's statement of marital assets and debts, identifying any exhibits that will be offered in support of these figures.
4. The identity of each witness and the factual issue(s) about which the witness is expected to testify.
5. The expected length of trial.
6. Whether mediation, arbitration, or another form of alternative dispute resolution may be appropriate in the opinion of either party.

The pretrial order shall also contain any information required elsewhere in these rules. The pretrial order shall be prepared as follows:

- In cases where counsel have appeared for both parties, counsel shall prepare and jointly sign the proposed pretrial order
- In cases where counsel has appeared for only one party, he or she shall prepare the pretrial order and secure the signature of the party appearing pro se
- In cases where both parties proceed pro se, they shall jointly prepare the pretrial order and each shall sign the order.
- In the event one party or counsel refuses or fails to sign the order, the party or counsel filing the order shall certify to the court in writing at the time of filing the pretrial order the circumstances surrounding the refusal or failure of the other party or counsel to sign the order.

The pretrial order required by this rule shall be filed with the court no later than fourteen days before the scheduled trial date.

#### 410.3.4. Pre-trial Statements.

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#### 410.4.5. Trial Submissions.

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**LR71-TR4.9-1102. Temporary Rule Concerning Mortgage Foreclosures on Real Estate.**

Effective April 15, 2010, Plaintiffs filing new mortgage foreclosure (MF) actions in the St. Joseph Circuit Court or St. Joseph Superior Court will be required to provide to the Clerk of the Court:

- One (1) additional stamped, addressed envelope, with no return address information, for each individual defendant (but not including any corporation or entity) named as a defendant,

AND

- A service list, including the name, address and, if available, the telephone number for each defendant.

This policy is adopted by the St. Joseph Circuit Court and St. Joseph Superior Court pursuant to an initiative of the Indiana Supreme Court and Indiana Housing and Community Development Authority to train and recruit volunteer lawyers to assist homeowners facing foreclosure and in furtherance of the purposes underlying Senate Enrolled Act No. 492.

Failure to comply with this policy will delay the processing of the case by the Clerk until compliance is achieved.

All MF actions filed on or after April 15, 2010, in the St. Joseph Circuit Court or the St. Joseph Superior Court, in which a request for settlement conference is made pursuant to I.C. 32-30-10.5-10, shall be the subject of an administrative transfer to the St. Joseph Superior Court, Mishawaka Division, for purposes of the scheduling and conduct of such settlement conference.

Unless extended by the St. Joseph Circuit Court and/or St. Joseph Superior Court, this policy expires December 31, 2012.